listings data is improper.[28] As Verizon has previously explained, however, Verizon's submission of this data is fully consistent with Section 222 of the Act and Commission precedent." The Commission has consistently relied on E911 listings data in prior proceedings, including in the Omaha forbearance proceeding, and other federal and state agencies have also relied on these data. The Commission also has recently requested E911 data from Verizon in WC Docket No. 02-112.[30] Several commenters nonetheless argue that various state laws prohibit Verizon's submission of E911 listings data in regulatory proceedings. As Attachment A to these reply comments explains, these claims are misplaced. None of the state laws that the commenters cite precludes Verizon from submitting E911 listings data to the Commission. The Commission should accordingly reject the commenters' attempt to hide relevant information from the Commission, and should instead require these parties to produce relevant data of their own.

2. Wireless

In both the ***Omaha*** and ***Anchorage*** orders, the Commission found that competition from cable alone was sufficient to justify forbearance, even without looking at other

[28] ***See*** NASUCA at 67-68; Broadview ***et al.*** at 10-12; Cavalier at 14; Comptel at 3-5; EarthLink at 54-55; Cox at 15.

[29] ***See*** Verizon's October 30, 2006, November 6, 2006, and December 5, 2006 filings in this docket, which respond to ACN *et al.*'s Motion to Dismiss and related filings by competitive carriers.

[30] ***See*** Letter from Donald K. Stockdale, Associate Chief, Wireline Competition Bureau, to Dee May, Verizon Communications, and John T. Scott III, Verizon Wireless, WC Docket No. 02-112, at request 1.f (FCC filed Mar. 13, 2007) (requesting that Verizon provide "[b]y carrier, the number of residential access lines provided by facilities-based providers other than Verizon (*e.g.*, E-911 listings in which Verizon is not the underlying local exchange carrier).").

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sources of competition." The Commission declined to consider competition from wireless, finding that it lacked sufficiently granular detail with respect to the "extent of substitution" between wireless and wireline services in the MSAs at issue. ***Anchorage Forbearance Order* ¶ 29; *see Omaha Forbearance Order*** ¶ 72. Although a number of commenters argue that the Commission should continue to ignore wireless competition because Verizon has failed to provide sufficiently granular detail on wireless-wireline displacement, those claims are misplaced.[32]

Verizon provided extensive evidence that wireless services are widely available in each of the six **MSAs** at issue, and that large and increasing numbers of consumers in these **MSAs** are using wireless service in place of wireline. First, Verizon provided maps and other data indicating that wireless services were widely available from multiple providers throughout each of the six MSAs.[33] Second, Verizon provided evidence that each of the wireless carriers offers packages of services that compete with Veriron's service for comparable offerings.[34] Third, Verizon demonstrated that use of wireless in

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[31] While some parties argue that the Commission's approach effectively accepts a cable-telephone company duopoly, ***see*** Telecom Investors at 8-13, the Commission has correctly rejected identical claims in the past. ***See Omaha Forbearance Order*** ¶ 71; ***Anchorage Forbearance Order*** ¶ 46.

[32] ***See*** Broadview ***et** al.* at 37-42; Sprint at 16; **ACN *et al.*** at 28

[33] ***See*** NY Decl. ¶ 30 & Exh. 4; Boston Decl. ¶ 23 & Exh. 4; Phil. Decl. ¶ 24 & Exh. 4; Pitt. Decl. ¶ 21 & Exh. 4; Providence Decl. ¶ 23 & Exh. 4; Va. Beach Decl. ¶ 20 & Exh. 4.

[34] ***See*** NY Pet'n at 10; NY Decl. ¶ 31 & Exh. 1; Boston Pet'n at 10; Boston Decl. ¶ 24 & Exh. 1; Phil. Pet'n at *25* & Exh. 1; Phil. Decl. ¶ 25 & Exh. 1; Pitt. Pet'n at 10; Pitt. Decl. ¶ 22 & Exh. 1; Providence Pet'n at 9-10; Providence Decl. ¶ 24 & Exh. 1; Va. Beach Pet'n at 9-10; Va. Beach Decl. ¶ 21 & Exh. 1.

each MSA was extensive.” Fourth, Verizon provided evidence that large and growing numbers of customers in each MSA were using wireless service in place of traditional wireline service?‘ Verizon not only provided evidence of national trends, but also demonstrated on an MSA-by-MSA basis that its retail access lines were declining and that this decline could be explained only by customers giving up their wireline phones for wireless and other sources of intermodal competition,”

The principal argument raised by the commenters is that competition from wireless should he ignored because wireless service is not a perfect substitute for wireline for all customers.[38] But this is not the correct test. Different services can impact the ability to raise prices so long as they are considered reasonably interchangeable by “marginal” customers – that is, the subset of customers who will switch between the services in the putative market in response to small changes in relative prices. The Commission has recognized that in order for two competing technologies to constrain each other’s prices, it “only requires that there he evidence of sufficient substitution for significant segments of the mass market,” not that every customer views the two services

[35] ***See*** NY Pet’n at 10-1 1; Boston Pet’n at 10-11; Phil. Pet’n at 10-1 1; Pitt. Pet’n at 10-1 1; Providence Pet’n at 10; Va. Beach Pet‘n at 10.

[36] ***See*** NY Pet’n at 11-12; ***N Y*** Decl. ¶¶ 32-34; Boston Pet’n at 11-12; Boston Decl. ¶¶ 25-27; Phil. Pet’n at 11-12; Phil. Decl. ¶¶ 26-28; Pitt. Pet’n at 11-12; Pitt. Decl. ¶¶ 23-25; Providence Pet’n at 10-12; Providence Decl. ¶¶ 25-27; Va. Beach Pet’n at 10-11; Va. Beach Decl. ¶¶ 22-24.

[31] ***See*** NY Pet’n at 16; NY Decl. ¶ **8;** Boston Pet’n at 15-16; Boston Decl. ¶ 7; Phil. Pet’n at 17; Phil. Decl. ¶ 8; Pitt. Pet’n at 15-16; Pitt. Decl. ¶ 9; Providence Pet‘n at 15; Providence Decl. ¶ 7; Va. Beach Pet‘n at 16; Va. Beach Decl. ¶ 9.

[38] ***See*** **NASUCA** at 47 (arguing that there is not “full substitutability” between wireless and wireline); Broadview ***et al.*** at 37-38; ACN ***et al.*** at 31; Comptel at 34-36; Cox at 19; Sprint at 15-16.

as substitutes. *Verizon/MCI Order* ¶ 91. In any event, the commenters' attempts to distinguish wireless and wireline service are wide of the mark.

Sprint claims (at 16) that "wireless services are mare expensive than wireline services" and therefore "wireless competition can have little price-restraining influence on Verizon's ILEC services." As Verizon demonstrated, this is not true. In each of the six MSAs, Sprint and other wireless carriers offer calling plans that are comparable in price to the plans of the major wireline and cable companies.[39] Sprint offers no contrary evidence of its own. Nor could it, as Sprint has historically taken the position – both as a wireless and wireline company – that wireless competes extensively with wireline. For example, in seeking to have its merger with Nextel approved, Sprint cited the ability of the combined company to provide competition to wireline providers as one of the key benefits of the transaction.[40] Moreover, before Sprint spun off its local wireline operations in January 2006, it consistently reported that "[w]ireless substitution continues to be the main driver for primary residential line loss."[41] As of July 2005, Sprint

[39] *See* NY Decl., Exh. 1; Boston Decl., Exh. 1; Phil. Decl., Exh. 1; Pitt. Decl., Exh. 1; Providence Decl., Exh. 1; Va. Beach Decl., Exh. 1.

[40] *See, e.g.*, Application for Transfer of Control at 31, *Consent to the Transfer of Control of Entities Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act*, WT Docket No. 05-63 (FCC filed Feb. 8,2005) ("Sprint Nextel will have a greater ability to compete for business that historically has gone to wireline companies."); Joint Opposition to Petitions To Deny and Reply to Comments at ii, *Consent to the Transfer of Control of Entities Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act*, WT Docket No. 05-63 (FCC filed Apr. 11,2005) ("The merger will create the largest independent wireless carrier in the nation with the financial, technical and additional resources necessary to compete with other wireless and wireline carriers.").

[41] *Q2 2005 Sprint Corp. Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 072705aq.731 (July 27,2005) ("*Q2 2005 Sprint Corp. Earnings Conference*

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estimated that "somewhere between 7 and 7.5% of . . . [its] customers have cut the cord."[42]

NASUCA claims (at 48) that wireless should *not* be viewed as a competitor to wireline because the quality of wireless connections is inferior.[43] But these claims do not

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Call") (statement by Sprint Corp. Local Telecom Division President Mike Fuller); *see also* Q3 *2005 Sprint Nextel Corp. Earnings Conference Cull,* FD (Fair Disclosure) Wire, Transcript 102605at.760 (Oct. 26, 2005) (Sprint Nextel Corp. CEO Dan Hesse: "Residential retail voice lines declined by 241,000 or 4.5% to 5.1 million, driven mainly by wireless substitution of primary lines and broad band substitution, including our own DSL of second lines."); *Q1* 2005 *Sprint Corp. Earnings Conference Call,* FD (Fair Disclosure) Wire, Transcript 04005au.781 (Apr. 20,2005) (Sprint Corp. Local Telecom Division President and COO Mike Fuller: "Wireless substitution continues to be the main driver for primary line losses. We estimate now that slightly greater than 7% of the households within our territory are wireless only.").

[42] *Q2 2005 Sprint Corp. Earnings Conference Call* at 16 (statement by Sprint Corp. Local Telecom Division President Mike Fuller).

[43] NASUCA and Broadview *et al.* also claim that wireless cannot be used to access the Internet, but that is both untrue and irrelevant. NASUCA at 49; Broadview *et al.* at **38.** 3G broadband wireless services are now available to more than 200 million people nationwide. *See* Verizon Wireless News Release, *Verizon Wireless Launches Faster New Wireless Broadband Network* (Feb. 1,2007); Sprint News Release, *Sprint Powers Up Faster Mobile Broadband Network in 10 More Markets, Upgraded Coverage Reaches 60 Million People* (Dec. 12,2006). According to the Commission's own data, more than 11 million subscribers were using wireless services for high-speed Internet access as of June 2006. *See* Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *High-speed **Services** for Internet Access: Status **As** of June 30, 2006* at Table 1 (Jan. 2007). In any event, the Commission has recognized that Internet access is sold in a separate market from voice service, and that there are multiple competitive alternatives for that separate product. *See, e.g.*, Report and Order and Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* 20 FCC Rcd 14853 ¶ 3, 47-59 (2005) ("*Wireline Broadband Order"); Omaha Forbearance Order* ¶ *30*. NASUCA also claims (at 49) that wireless cannot be used for DVR connections, **fax** machines, home alarms, and multiple phone extensions. But there are wireless, broadband, or other substitutes for all of these things, and, in any case, NASUCA provides no evidence that even a small percentage of customers would be unwilling to switch from wireline to wireless because of the inability to obtain one or more of these capabilities.

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square with the facts. Analysts have estimated that wireless subscribers make 64 percent of their long-distance calls and 42 percent of their local calls on their wireless phones.[44] It is thus apparent that consumers consider wireless quality just fine for a significant percentage – if not the majority – of their calls. In fact, the coverage and reliability of wireless networks has continued to improve due to investments by wireless providers,[45] and the overwhelming majority of consumers indicate in surveys that they are satisfied with the quality of their wireless service.[46]

Finally, Cox claims (at 18) that much of the competition from wireless is from Verizon Wireless, which cannot be expected to discipline Verizon's wireline operations.[47] Cox's claim defies economic logic. Verizon Wireless faces competition

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[44] Kate Griffin, Yankee Group, *Pervasive Substitution Precedes Displacement and Fixed-Mobile Convergence in Latest Wireless Trends* at 5 & Exh. 3 (Dec. 2005); *see also* David Chamberlain & Kent R. Lundgren, In-Stat, *Wireless in the Consumer Telecom Bundle: Discounts Without Convergence* at 15 (Oct. 2005) (19 percent of survey respondents transferred *all* long-distance calling to wireless); Lee Rainie & Scott Keeter, Pew Internet & American Life Project, *Pew Internet Project Data Memo: Cell Phone Use* at 4 (Apr. 2006) (26 percent of Americans surveyed said they couldn't live without a wireless phone).

[45] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993,* Eleventh Report, 21 FCC Rcd 10947, ¶¶ 132-134 (2006).

[46] *See* CTIA Press Release, *Consumers Remain Overwhelmingly Satisfied with Their Wireless Service, New Poll Finds* (Sept. 13,2006) (August 2006 survey by McLaughlin & Associates found that 86 percent of consumers were satisfied with their wireless phone service).

[47] Sprint relatedly claims (at 29) that wireless carriers "can provide little competitive check on a BOC, chiefly because wireless carriers must rely on ILEC facilities to provide their service." But the Commission has rejected the underlying premise of Sprint's claim – that wireless carriers need less expensive access to ILEC facilities in order to compete more aggressively with wireline service. *See Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange*

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from three other national wireless carriers, one or more regional carriers, plus a number of Mobile Virtual Network Operators.[48] Verizon Wireless cannot afford not to compete aggressively against these other wireless carriers in order to protect *its* **wireline** business; to the contrary, Verizon Wireless is the most successful wireless carrier in the country precisely because of how aggressively it competes. And the competition that Verizon Wireless provides in wireless redounds to Verizon's wireline business, just as if Verizon Wireless were an unaffiliated entity.

3. Over-the-Top VoIP

In both the *Omaha* and *Anchorage* orders, the Commission reached the same conclusion with respect to over-the-top VoIP services as it did for wireless, concluding that it lacked sufficiently granular detail to determine the "extent of substitution" between over-the-top VoIP and wireline services in the MSAs at issue. *Anchorage Forbearance Order* ¶ 29; *see Omaha Forbearance Order* ¶ 72. But as with respect to wireless, Verizon has provided granular data demonstrating that there is extensive competition from over-the-top VoIP services in each of the six MSAs. Moreover, the general trends since the records in those proceedings were compiled provide further evidence that over-the-top VoIP provides extensive competition with wireline service.

Verizon demonstrated in its petitions that there are several dozen over-the-top VoIP providers in each of the six MSAs, and that these providers are offering service that

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Curriers, Order on Remand, 20 FCC Rcd 2533, ¶ 34 (2005) *("Triennial Review Remand Order"),aff'd, Covad Communications Co. v. FCC,* 450 F.3d 528 (D.C. Cir. 2006).

[48] *See* NY Pet'n at 10; NY Decl. ¶ 30; Boston Pet'n at 9; Boston Decl. ¶ 23; Phil. Pet'n at 9-10; Phil. Decl. ¶ 24; Pitt. Pet'n at 9; Pitt. Decl. ¶ 21; Providence Pet'n at 9; Providence Decl. ¶ 23; Va. Beach Pet'n at 9; Va. Beach Decl. ¶ 20.

is comparable in features and price to Verizon's offerings.[49] Verizon also demonstrated that between 36 and 53 percent of all households in each MSA subscribed to broadband services,[50] and that broadband service is available to an even greater number. **This is** significant because any customer with a broadband connection can obtain voice service from a competitive VoIP provider.[51]

Since Verizon filed its petitions, the availability and use of broadband have continued to grow, as has the use of broadband to obtain over-the-top VoIP services. According to analysts, in the fourth quarter of 2006, "total U.S. broadband subscribers surpassed 54.1M, representing approximately 49.3% penetration of U.S. households, up

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[49] ***See*** NY Pet'n at 12-13; NY Decl. ¶¶ 40-41 & Exhs. 1-2; Boston Pet'n at 12-13; Boston Decl. ¶¶ 34-35 & Exhs. 1-2; Phil. Pet'n at 12-13; Phil. Decl. ¶¶ 36-37 & Exhs. 1-2; Pitt. Pet'n at 12-13; Pitt. Decl. ¶¶ 30-31 & Exhs. 1-2; Providence Pet'n at 12; Providence Decl. ¶¶ 32-33 & Exhs. 1-2; Va. Beach Pet'n at 12; Va. Beach Decl. ¶¶ 31-32 & Exhs. 1-2.

[50] ***See*** NY Pet'n at 14 (48 percent); Boston Pet'n at 14 (53 percent); Phil. Pet'n at 14 (44 percent); Pitt. Pet'n at 14 (36 percent); Providence Pet'n at 13 (50 percent); Va. Beach Pet'n at 13 (44 percent).

[51] ***See*** ACN ***et al.*** claim (at 31-32) that the Commission found in the ***Triennial Review Remand Order*** that broadband service "was not ubiquitous enough for VoIP to threaten wireline service." But the evidence on which the Commission relied at that time was from June 2004, which is nearly three years old. ***See Triennial Review Remand Order*** ¶ 39 n.118. Since that time, cable broadband availability has expanded from 89 to 93 percent of homes, and the number of broadband subscribers has grown from less than 30 percent of households to more than 47 percent of households. ***See*** Simon Flannery, ***et al.***, Morgan Stanley Telecom Services, ***Speed Is Key As Broadband Market Matures*** at Exh. 10 (Jan. 26,2007) (estimates for cable broadband availability as of year-end 2004 and year-end 2006); Timothy Horan, ***et al.***, CIBC World Markets, ***4Q06 Mid-Quurter Review*** at Exh. 8 (Feb. 21,2007) (year-end 2006 estimate for broadband subscribers); Timothy Horan, ***et al.***, CIBC World Markets ***3Q04 Communications Services Preview*** at Exh. 12 (Oct. 8,2004) (year-end 2004 estimate for broadband subscribers).

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from 47.1% last quarter and 40.1% a year ago."[52] Analysts estimated that, as of year-end 2006, over-the-top VoIP providers served more than 2.7 million voice subscribers nationwide – a 63-percent increase in 2006.[53] SunRocket recently announced that it has "[b]uil[t] a 200,000 subscriber base from scratch in a relatively short period of time," which it claims "demonstrates how rapidly consumers are embracing the value, simplicity and enhanced feature set of SunRocket Internet phone service."[54]

As with wireless, the principal argument that commenters raise with respect to over-the-top VoIP is that it is not a perfect substitute for wireline service in every respect and for all consumers. As explained above, however, that is not the right standard. In any event, the commenters' attempts to distinguish over-the-top VoIP and wireline services are misguided. As a number of state regulators have recognized, consumers now view over-the-top VoIP services as a substitute for traditional wireline services."

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52 Mike McCormack, *et al.*, Bear Steams, *March Broadband Buzz; A Monthly Update on Critical Broadband Issues* at 3 (Mar. 12,2007).

53 *See* Craig Moffett, *et al.*, Bemstein Research, *VoIP: The End of the Beginning* at Exh 1 (Apr. 3, 2007).

54 SunRocket Press Release, *SunRocket Breaks Through 200,000 Subscriber Milestone* (Apr. 2,2007) (statement by SunRocket President and CEO Lisa Hook).

55 *See, e.g., Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services,* Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings, Case 05-C-0616, at 33-34 (N.Y.P.S.C. Apr. 11,2006) (Concluding that "application based phone service (e.g., Vonage)" is "widely available in New York and that from the perspective of customer demand they are sufficiently close substitutes for traditional wireline local service. . . . In our judgment, consumers view these offerings as close substitutes to wireline local service."); *Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities,* Opinion, Rulemaking 05-04-005, Decision 06-08-030, at 119-120 (Cal. P.U.C. Aug. 24,2006) ("VoIP communications are

NASUCA states (at 50-51) that VoIP service suffers from "poor service quality" and that it lacks support for operator-assisted calling. But NASUCA provides no support for this assertion. In fact, consumer surveys indicate that consumers find the quality of over-the-top VoIP services acceptable.[56] Consistent with this fact, most consumers who subscribe to VoIP use it as a replacement for their primary telephone line. For example, analysts have reported that approximately 60-70 percent of over-the-top VoIP subscribers port their telephone numbers.[57]

NASUCA also claims (at 51) – again without support – that VoIP service is unable "to support services that require a wireline telephone (*e.g.*, fax, alarm systems)." But there is no evidence that these features prevent a significant number of customers

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competitors to wireline telecommunications services"; "VoIP is a close substitute for wireline service."); *Joint Application of Verizon Communications, Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger*, Opinion and Order, Docket Nos. **A-**310580F0009, *et al.*, 2006 Pa. PUC LEXIS 22, at *132 (Pa. P.U.C. Jan. 11, 2006) ("The presence of substitutes or alternatives such as cable telephony, and VoIP, for the mass market customer class, particularly for the provision of local service, are a sufficient constraint on the exercise of market power and potentially anti-competitive behavior."); Div. of Competitive Markets and Enforcement, Florida PSC, *Report on the Status of Competition in the Telecommunications Industry: As of May 31, 2006* at 66 (Dec. 2006) (VoIP services "are successfully providing competitive alternatives to both residential and business subscribers." The PSC noted "the increasing acceptance of intermodal competitors, especially wireless and Voice over Internet Protocol (VoIP) service providers, as adequate substitutes for wireline telecommunications service by the consuming public." *Id.* at 2.).

[56] ***See***, *e.g.*, Tektronix Press Release, *Minacom: Internet Phone Quality Improves Significantly and Steadily over the Past 12 Months* (Aug. 28, 2006) (finding that VoIP service received an average Mean Opinion Score of 4.2, which is higher than the score of **3.9** for the PSTN; more than 85 percent of VoIP calls exceeded average PSTN quality over the survey period).

[57] *See* Douglas S. Shapiro, *et al.*, Banc of America Securities, *Battle for the Bundle* at 30 (June 14,2005).

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from switching to over-the-top VoIP services. And there are now numerous wireless transmitters that can he used in place of a traditional phone line for these purposes.[58] In addition, security companies are now developing monitoring systems that can communicate via a home's broadband Internet connection.[59] Consumers can also use off-the-shelf software to enable their broadband-equipped computer to act as an equivalent to a fax machine.[60]

Broadview *et al.* argue (at 42-44) that the Commission should not count over-the-top VoIP providers as a "source of facilities-based competition, because, by definition, they ride the facilities of another provider, which in many cases is likely to he Verizon itself." But as the Commission has recognized, the underlying broadband connections *are* supplied in a competitive market, which ensures that over-the-top providers can reach

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[58] ***See, e.g.***, Laura Stepanek, *Honeywell's Communications Solution: **More** Than Just **New** Products*, Sec. Distrib. & Mktg. at 18 (Dec. 1, 2006) (Honeywell's radios, which use General Packet Radio Service (GPRS) and the Internet as primary communication paths, "offer customers a complete, long-term solution to challenges presented by the Sunset Clause, Voice over Internet Protocol, and premises without phone lines") (quoting Ron Rothman, Honeywell Security's president).

[59] *See, e.g.*, David Engebretson, *IP Alarm **Transmitters,*** Sec. Distrib. & Mktg. at 104 (July 1, 2006) ("Honeywell provides IP alarm transmission capability to participating central stations through the AlarmNet network, which also provides long-range radio and cellular alarm capability. Customers don't need a radio transmitter at the premises; instead, using a broadband link, they connect to a network access point on the AlarmNet network.").

[60] ***See**, e.g.*, Symantec. *WinFax **PRO,*** http://www.symantecstore.com/antivirus/winfax-pro-g.htm. In addition, newer operating systems such as Windows Vista are shipped with built in fax utilities that allow consumers to accept faxes directly over the Internet and send faxes from their email account or through the Internet. ***See*** Microsoft, ***Windows** Vista*, *Windows Fax and Scan*, http://www.microsoft.com/windows/products/windowsvista/features/details/faxscan.mspx.

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consumers, regardless of the underlying broadband provider.[61] And because virtually all consumers can choose to obtain over-the-top VoIP service from a cable operator or other competitive provider besides Verizon, over-the-top VoIP services are an alternative to all of the facilities used to provide traditional voice services, including not only the switching component, but also the loop and transport infrastructure as well.[62]

4. Wholesale Alternatives

In both the *Omaha* and *Anchorage* orders, the Commission relied in part on competitors' ability to use the ILEC's wholesale offerings pursuant to "provisions of the Act designed to develop and preserve competitive local markets." *Omaha Forbearance Order* ¶ 64; *see id.* ¶ 37; *Anchorage Forbearance Order* ¶ 30. The Commission recognized that an ILEC who faces facilities-based competition has "the incentive to make attractive wholesale offerings available so that it will derive more revenue indirectly from retail customers who choose a retail provider other than [the ILEC]." *Omaha Forbearance Order* ¶ 67. The D.C. Circuit upheld this determination, explaining that "the *TRRO* explicitly recognized that an ILEC's tariffed offerings could, in certain circumstances, he an avenue for competitive entry," and that the Commission was

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[61] *See, e.g., Wireline Broadband Order* ¶¶ 47-59. EarthLink claims (at 33) that the Commission needs to preserve unbundling in order to maintain a competitive broadband market, but the Commission has consistently rejected the notion that unbundling is necessary to facilitate competition, and has correctly found that it has just the opposite effect. *See, e.g., Wireline Broadband Order* ¶¶ 41-46; *Triennial Review Order* ¶¶ 272-97. The Commission has likewise rejected the request, repeated by EarthLink here (at 15), to define a discrete market for "lower speed broadband" in which DSL is the only supplier. *See Wireline Broadband Order* ¶¶ 47-59; *Triennial Review Order* ¶ 263.

[62] *See* ACN *et al.* at 31-32

reasonable to conclude those circumstances were met given "the combination of tariffed ILEC facilities and facilities-based competition." ***Qwest Corp. v. FCC***, slip. op. at 17.[63]

Consistent with these findings, Verizon demonstrated in its petitions that it is making attractive wholesale offerings available in each of the six MSAs, even when it has no obligation to do so. And as Table 4 demonstrates, this continues to be the case. ***See*** Table 4; Lew/Wimsatt/Garzillo Reply Decl. ¶ 51, Table 12.[64] Competitors in each of the MSAs also continue to resell Verizon's service pursuant to Section 251(c)(4). ***See*** Table 4; Lew/Wimsatt/Garzillo Reply Decl. ¶ 51, Table 12.

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[63] In light of these prior findings and the record here, there is no basis for concerns that various facilities-based competitors may not offer wholesale access to their facilities. Broadview *et al.* at 24; Sprint at 2, 5; Monmouth at 6-8, 12. In the ***Omaha Forbearance Order,*** the Commission rejected similar claims based on its findings that the ILEC's "own wholesale offerings will continue to be adequate'' without offerings from other competitors. ***Omaha Forbeurance Order*** ¶ 67; ***see also id.*** ¶ 71 ("[T]he Commission has previously rejected arguments 'that a fully competitive wholesale market is a mandatory precursor to finding that section 10(a)(1) is satisfied."') (citing ***Petitionfor Forbearance of the*** *Verizon* ***Telephone Companies Pursuant to 47*** *U.S.C. § 160(c)*, Memorandum Opinion and Order, 19 FCC Rcd 21496, ¶ 27 (2004)).

[64] This updates the December 2005 data that Verizon supplied with its petition, which were the most recent available at the time. With these updated data, there is no merit to Broadview ***et*** *al.*'s claim (at 51) that Verizon's data are "out of date."

[Begin Confidential]

[End Confidential]

Several commenters argue that the Commission must separately consider the extent of UNE-based competition in the six MSAs.[65] But in the *Omaha Forbearance Order*, the Commission held that its conclusion was not based on competition using UNEs, because such competition was not necessary to ensure that prices are just and reasonable. ***See*** *Omaha Forbearunce Order* ¶ *67.* The Commission also found that competition based on UNEs represented only a ''minorportion of the competition in the Omaha **MSA."** ***Id.*** ¶ 68. Verizon did not rely on UNE-based competition in its petitions here, and pointed out that, as in Omaha, only a few competitors (such as Cavalier) were competing using UNEs, which they combined with their own facilities.[66] In its

[65] *See* Cavalier at 9-1 1; NASUCA at 19; ACN ***et*** *al.* at 10.

[66] *See* NY Pet'n at 14-15; Boston Pet'n at 14-15; Phil. Pet'n at 14-15; Pitt. Pet'n at 14-15; Providence Pet'n at 14; Va. Beach Pet'n at 14. Given the Commission's prior decisions not to rely on UNE-based competition, and the fact that Verizon did identify competitors using UNEs to compete (together with the volumes of lines they appear to be serving using UNEs), there is no basis to Broadview ***et*** *al.*'s claim (at *22-23,* 50-51) that Verizon has failed to provide more extensive data on the extent to which competitors are relying on UNEs in each of the MSAs.

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comments here, Cavalier declines to reveal how few lines it serves using UNEs, which is telling.[67] **As** a number of commenters note, the Commission's own data show that UNEs represent a relatively small and declining ***form*** of competition.[68] Exhibit ***4*** to the Lew/Wimsatt/Garzillo Reply Declaration also shows that the number of residential lines competitors are serving using Wholesale Advantage far exceeds the number of unbundled analog loops they are obtaining (which is the type of loop that would be used to serve a mass-market customer).

Broadview *et al.* argue (at 51) that the Commission should not consider Verizon's data on wholesale alternatives because they are "not wire-center specific." But in each of the six MSAs, Verizon makes its wholesale offerings available MSA-wide on the same terms. Thus, the pre-condition for a more granular analysis – namely, the possibility that competitive conditions differ across the MSA – is absent. In any event, Exhibit 4 to the Lew/Wimsatt/Garzillo Reply Declaration provides data on the number of residential lines that competitors are serving using Wholesale Advantage and resale in each wire center within the six MSAs at issue.

Finally, several competitive carriers argue that the Commission should reverse its prior decisions to consider wholesale competition based on their speculative concern that, if Verizon is granted the requested forbearance, it will not continue to make Wholesale

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[67] Cavalier describes (at 2) how many total residential customers and lines it serves, but fails to indicate what portion of these totals are served via UNEs, as opposed to via resale through its Talk America affiliate, or via VoIP through its Phonom affiliate.

[68] ***See*** ACN *et al.* at 10; Ind. Anal. & Tech. Div., Wireline Competition Bureau, *Local Telephone Competition: Status **As** of June 30, 2006* at Table **3** (Jan. 2007) (CLEC lines served using UNEs declined from 56 percent of CLEC lines in June 2005, to 42 percent of CLEC lines in June 2006).

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Advantage available on the same terms as it does today.[69] But this argument assumes that Verizon will face *less* facilities-based competition in the future than it does today, whereas the evidence shows that the opposite *is* true.[70] Likewise, there is no merit to claims that Section 271 fails to provide an adequate "backstop" to ensure that Verizon continues to provide wholesale offerings on reasonable terms." The terms on which Verizon is providing Wholesale Advantage today are determined by the market, not by pricing rules under Section 271. *Cf. Omaha Forbearance Order* ¶ 68.[72] Verizon's only regulatory obligation is to ensure that its rates are just, reasonable, and non-discriminatory, pursuant to Sections 201 and 202 of the Communications Act. *See id.*

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[69] *See* EarthLink at 34-35; Broadview *et al.* at 54-55; ACN *et al.* at 35; Time Warner Telecom at 12-13; Cavalier at 10; Comptel at 28; Integra at 2-7.

[70] The fact that Verizon has been making its Wholesale Advantage service available in each of the six MSAs puts the lie to claims that Verizon does not have the same incentives to provide wholesale offerings as in Omaha or Anchorage, because it faces less cable competition. *See* Broadview *et al.* at 54-55; ACN *et al.* at 35; Time Warner Telecom at 12-13.

[71] *See* EarthLink at 34-35; Broadview *et al.* at 61-65; ACN *et al.* at 64; VSCC at 4-5. For the same reason, there is no basis to the claims that Verizon has failed to disclose what commercial terms it will offer if it is granted the requested forbearance. ***See*** Cavalier at 10; ACN *et al.* at 34. Verizon's terms are dictated by competitive forces, and will continue to be.

[72] A number ofcommenters claim that a December 15,2006 letter that McLeod submitted in the Anchorage forbearance proceeding as proofthat, absent 271 requirements, competitors will be forced to exit the market. *See Anchorage Forbearance Order* ¶ 39 & n.134; ACN *et al.* at 54 & Exh. B; Comptel at 28; Integra at 2-7; Broadview *et al.* at 54, **Cox** at 27 & n.78. Such concerns are misplaced. Competition from cable, wireless, and other intermodal sources is only increasing, and there is no serious risk that these sources of competition will exit the market. As a result, Verizon will have a continuing incentive to provide access to loops and transport at commercially negotiated rates in order to keep business on its network.

No competitor has proven that the commercially negotiated rates for Verizon's wholesale services fail to meet that standard.

5. Decline in Verizon's Retail Lines

As noted above, the Commission has consistently held that, in a dynamic industry such as this one, historic measures of static market share are not especially meaningful in the competitive analysis. ***Seep.*** 17, ***supra.*** In the ***Omaha*** and ***Anchorage*** orders, the Commission accordingly focused on the "facilities coverage" of competitors, rather than on the number of customers that competitors were already serving over those facilities. ***Anchorage Forbearance Order*** ¶¶ 31-34; ***see Omaha Forbearance Order*** ¶ 36.

Verizon nonetheless provided evidence in its petitions that Veriron's retail residential switched access lines were declining due to competition.[73] And more recent data show that these declines have continued apace over the past year. ***See*** Table *5;* Lew/Wimsatt/Garzillo Reply Decl. ¶ 10, Table 1. Moreover, as Verizon previously explained, these declines occurred despite the fact that the number of households in each MSA increased during this time.[74] Analysts have found that these declines are due to competition, and, as a result, they expect these trends to continue in the future.[75]

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[73] See NY Pet'n at 16; ***NY*** Decl. ¶ 8; Boston Pet'n at 16; Boston Decl. ¶ 7; Phil. Pet'n at 17; Phil. Decl. ¶ 8; Pitt. Pet'n at 16; Pitt. Decl. **79;** Providence Pet'n at 15; Providence Decl. ¶ 7; Va. Beach Pet'n at 16; Va. Beach Decl. ¶ 9.

[74] ***See NY*** Pet'n at 16; ***NY*** Decl. ¶ 8; Boston Pet'n at 16; Boston Decl. ¶ 7; Phil. Pet'n at 17; Phil. Decl. ¶ 8; Pitt. Pet'n at 16; Pitt. Decl. ¶ 9; Providence Pet'n at 15; Providence Decl. ¶ 7; Va. Beach Pet'n at 16; Va. Beach Decl. ¶ 9.

[75] ***See*** Simon Flannery, ***et al.,*** Morgan Stanley, ***4Q06 Preview/2007 Outlook: Is Telecom Back for Good?*** at 14 (Jan. 24,2007) ("Line loss has been driven by continued wireless substitution and increasing competition from VoIP. . . . Verizon is again likely to lead the access line declines, given its significant exposure to Cablevision."); Mike McCormack,

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Several commenters argue that much of Verizon's line loss is due to the loss of second lines to DSL.[76] As an initial matter, even if that were true, it is irrelevant, as DSL is provided in a highly competitive broadband market and, therefore, each line lost to DSL is a line lost to a competitively supplied alternative technology. ***See*** Taylor Decl. ¶ 13. In any event, as Dr. Taylor explains, the loss of second lines to DSL accounts for

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Bear Steams, ***Telecom Trends: Dissecting 4Q06 – Wireless Strength, Wireline Mediocrity*** at 3 (Feb. 14,2007) ("We estimate that retail consumer access lines fell 7.1% in the quarter. The decline represents an acceleration from the 6.9% decline in 3Q06 and marks the sixth consecutive quarter of accelerating loss rates.. .Overall, we believe wireless substitution remains the primary driver of absolute line losses, though cable competition appears to be slightly increasing as the major MSOs expand VoIP availability and heavily promote their triple play offers."); Jeffrey Halpern, Bernstein Research, *U.S.* ***Telecom: Large Cap TelCo Risk from Potential New Broadband Entrants Appears Over-rated*** at 3-4 (Sept. 5,2006) ('We estimate that consumer access lines in service – a proxy for the consumer wireline voice business – will fall from almost 114 million (including all primary and additional lines) in 2000 to a market of approximately 85 million lines by 2010. At the same time, the dominance of the ILECs has diminished. The primary driver of the decline has been technology substitution. Wireless service and VoIP are now a substitute for primary lines.").

[76] ***See*** Sprint at 13; NASUCA at 64-65; AdHoc at 2-3 & Selwyn Decl ¶ 6; Broadview ***et*** *al.* at 25-26; NCTA at 9 (citing ***Anchorage Forbearance Order*** ¶ 28 n.88).

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no more than a small percentage of the total decrease in Verizon's retail switched access lines. *See id.* ¶ 12 & Table 2.

Moreover, any analysis of the decline in access lines and minutes must take into account not only the trend in the absolute number of lines and minutes, but also a comparison to historical growth rates.” Historically, both the number of access lines and the number of minutes traversing local networks grew at a relatively stable rate, driven in large measure by growth in the population and the overall economy. But while these overall trends have continued, the numbers of local wireline lines not only are no longer growing but have actually declined in absolute terms as intermodal competition and technology substitution have increased.

Although Verizon does not have enough historical MSA-specific data to perform this comparison, the Commission's national data illustrate the point. According to the Commission's data, wireline access lines first began to decline in absolute terms in 2000 – in every year prior dating back to at least the Great Depression, there were year-over-year increases. Between 1999 and June *2006,* the number of wireline access lines decreased from approximately 181 million to 142 million, a difference of 39 million. By contrast, historical growth trends suggest that, but for losses to competition, there would

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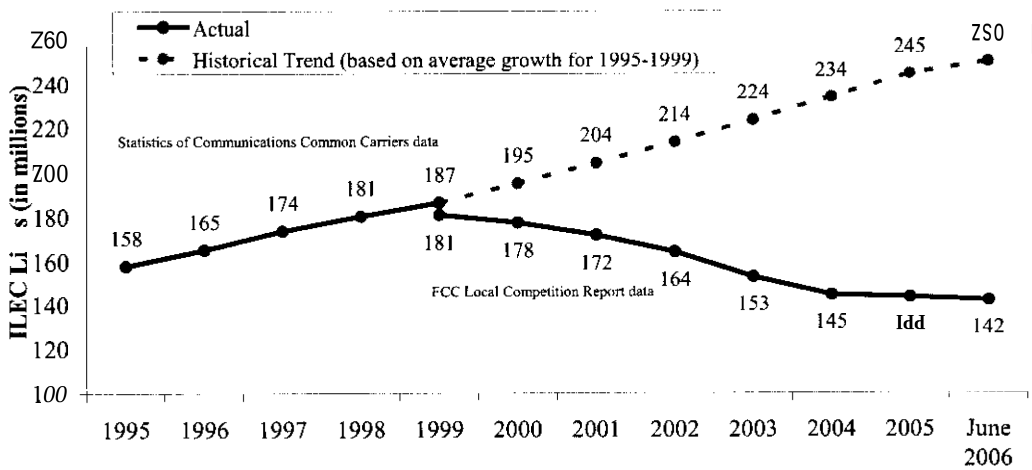
[77] While some commenters attempt to show that the decline in retail residential switched access lines between 2000 and *2006* is smaller than the increase in broadband connections during that same period, their analysis fails to account for gross additions of switched access lines during that period due to population and economic growth. ***See*** Ad Hoc at 2-3 & Selwyn Decl ¶ 7; ***see** also* Sprint at 13; NASUCA at *64-65.* The actual decrease in retail residential switched access lines between *2000* and *2006* is the difference between current totals and what the totals would have been based on historic growth rates, not merely the difference between the totals in *2000* and *2006*.

have been 250 million wireline access lines as of June 2006, a difference of approximately 70 million compared to 1999 levels. *See* Figure 1. The Commission's data further show that, between 2000 and 2005, the number of non-primary residential lines decreased by only 14.1 million lines,[78] which means that no more than about a fifth of the total decrease can be explained by a loss of second lines to broadband (and an even smaller share to Verizon DSL). *See also* Taylor Decl. ¶ 8 & Table 1.

Figure 1. Decrease in Wireline Access Lines



The FCC began collecting Form 477 data for the Local Competition Report for 1999, which is why the Statistics of Communications Common Carriers (SOCCC) is used for data before this point. We rely on the Local Competition Report for data after this point because, unlike the SOCCC, it consistently treats wholesale lines as non-ILEC lines. For 1999, we have provided data from both sources to illustrate the magnitude of the difference between the two sources.

Sources: Ind. Anal. & Tech. Div., WCB, FCC, *Trends in Telephone Service* at Table 7.1 (2007) (citing adjusted Statistics of Communications Common Carriers data); Ind. Anal. & Tech. Div., WCB, FCC, *Local Telephone Competition: Status As of June 30, 2006* at Table 1 (Jan. 2007).

Several commenters argue that the Commission's own data show that Verizon's market share of residential lines is still at high levels.[79] As explained above, however, evaluations of static market share are not the right test. In any event, the data on which these commenters rely consider only a subset of the competitive alternatives that mass-

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[78] *See* Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Trends in Telephone Service* at Table 7.4 (2007).

[79] *See* ACN *et al.* at 7; Selwyn Decl. ¶¶ 7-8; Broadview *et al.* at 53.

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market customers are using. For example, the Commission's data do not include wireless in the analysis. As Figure 1 in the Lew/Wimsatt/Garzillo Reply Declaration shows, when *all* of the competitive alternatives are taken into account, *Verizon's* share ofmass-market connections in each of the six MSAs is below the levels at which the Commission previously made findings of non-dominance, even before the advent of intermodal competition."

Finally, a few commenters claim that Verizon failed to provide relevant data about market elasticities and structure." That is not true. Although the Commission in the *Omaha Forbearance Order* found that such evidence was "relevant to determining whether enforcement of dominant carrier regulation is necessary," it also held that these factors were easily satisfied just by looking at competition from cable. *Omaha Forbearance Order* ¶ 31. For example, the Commission found that "the growth in Cox's residential access line base and corresponding decline in Qwest's base" demonstrated that the "demand elasticity in the mass market interstate exchange market to he high." ***Id.***

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[80] When the Commission declared AT&T to he non-dominant in the provision of domestic interstate interexchange services, AT&T's market share of such services was estimated to be approximately 60 percent. *See AT&T Non-Dominance Order* ¶ 67. Likewise, AT&T's share of the international message telephone service market was estimated to be 60 percent when AT&T was declared non-dominant in the provision of those services, and AT&T's average market share in 76 select countries was 74 percent, and AT&T faced no competition at all in four countries. *See Motion of AT&T Corp. To Be Declared Non-Dominant for International Service,* Order, 11 FCC Rcd 17963, ¶¶ 40, 41, 46 (1996).

[81] *See* NASUCA at 23, 46; Broadview *et al.* at 60; Comptel at 18-19. NASUCA also claims (at 61-62) that Verizon has failed to provide evidence of retail price declines. But the Commission did not rely on such data in the Omaha or Anchorage proceedings. Moreover, retail price declines are not relevant where, as here, the issue concerns prices for services that have historically been set artificially below competitive levels.

¶ 33.[82] As demonstrated above, Verizon has provided this same evidence. The Commission also found that the existence of competition from cable, as well as the availability of Qwest's wholesale offerings, demonstrated that suppliers had the ability "to increase the quantity of service supplied in response to an increase in price.'' ***Id.*** ¶¶ 35-36. Verizon provided evidence of this as well. Finally, the Commission found that, as compared to the incumbent cable operator, an ILEC "does not have sufficiently lower costs, sheer size, superior resources, financial strength, or technical capabilities to warrant retaining the regulations in question." *Id.* ¶ **38.** That determination applies with equal force here, as the incumbent cable operators at issue here either are the same (Cox), comparable (Cablevision), or bigger (Comcast, Time Warner) than in Omaha.

B. There Is Extensive Competition for Enterprise Customers in Each of the Sin MSAs

Veriron's petitions demonstrated that competition for enterprise customers in each of the six **MSAs** is extensive, even more so than it was in Omaha. In the ***Omaha Forbearance Order***, the Commission decided to forbear from loop and transport unbundling with respect to enterprise customers based on competition from Cox, the incumbent cable operator, together with "maps and other evidence" that other competitors have deployed their own transport facilities, and additional evidence that competing carriers were using wholesale alternatives to compete successfully. *Id.* ¶ 66;

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[82] ***See also Qwest** 272 **Forbearance Order*** ¶ 38 (holding that even though there was insufficient evidence to estimate demand elasticity, "the increase in the number of customers subscribing to competitive wireline and cable services suggests an increase in the elasticity of demand for [traditional wireline] services."); Declaration of Dr. Howard Shelanski, ***Section 272(f)(1) Sunset σ the BOC Separate Affiliate and Related Requirements***, WC Docket No. 02-1 12 (FCC filed Mar. 29,2007).

see id. ¶ 67. Verizon provided this same evidence in its petitions for each of the six MSAs.[83]

1. Cable

Verizon demonstrated in its petitions that cable companies have ubiquitous networks in each of the six MSAs and that these networks are capable of – and are – being used to serve enterprise customers. This was the same type of evidence on which the Commission relied in Omaha to grant forbearance. *See Omaha Forbearance Order* ¶ 66. More recent information – including the comments of cable operators here – further demonstrates that cable operators are moving aggressively into the enterprise market, and therefore exert significant competitive discipline on Verizon.[84]

The CEO of Comcast – the primary cable operator in the Philadelphia, Pittsburgh, and Boston MSAs, and one of several major cable operators in the Providence and New York **MSAs** – has recently stated that commercial services represent the "next great business opportunity" for Comcast, and that it will do the "same thing" in the enterprise market as it has done in the mass market.[85] Comcast recently told investors that it would

[83] *See* ***NY*** Pet'n at 17-26; ***NY*** Decl. ¶¶ 43-71 & Exhs. 5-8; Boston Pet'n at 16-24; Boston Decl. ¶¶ 37-65 & Exhs. 5-7; Phil. Pet'n at 18-26; Phil. Decl. ¶¶ 39-68 & Exhs. 5-7; Pitt. Pet'n at 16-24; Pitt. Decl. ¶¶ 33-57 & Exhs. 5-7; Providence Pet'n at 16-23; Providence Decl. ¶¶ 35-57 & Exhs. 5-7; Va. Beach Pet'n at 17-23; Va. Beach Decl. ¶¶ 34-SI & Exhs. 5-7.

[84] Exhibit 7 to the Lew/Verses/Garzillo Declarations collects marketing material from the major cable operators' own websites describing these companies' offerings to business customers.

[85] *Comcast Corporution at Citigroup 17th Annual Entertainment, Media and Telecommunications Conference – Final*, FD (Fair Disclosure) Wire, Transcript 010907aw.757 (Jan. 9,2007) (statement by Comcast Chairman & CEO Brian Roberts).

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be making a "$250 million investment in commercial services in 2007."[86] In its comments here, Comcast acknowledges (at 4 & n.9) that it "has provided some services to some businesses in the Boston, Pittsburgh and Philadelphia MSAs," and that business services have recently become "a focus of Comcast's sales and marketing efforts." Comcast fails to provide any further details regarding the reach of its network to serve business customers, the number or location of its existing business customers, the types of services it is providing to these customers, or its future plans to compete.

Time Warner Cable – one of the major cable operators in the New York MSA – has recently announced that, "[i]n 2007, [it] will launch Time Warner Cable's Business Class Phone, an offering directed towards small to medium size businesses."[87] In its comments here, Time Warner Cable acknowledges (at 2) that it has "recently introduced business-class services," but claims (at 5, 17) that it "is unable to reach most enterprise customers using its own last-mile facilities," and that "its participation in the enterprise market remains nascent." Time Warner Cable provides no supporting data to support these assertions, and fails to describe how many business customers it reaches with its network, the number it already serves, or any other pertinent information regarding its enterprise offerings and plans. Moreover, while Time Warner Cable claims that it lacks last-mile access to businesses, its former affiliate, Time Warner Telecom, reports serving

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[86] Tbomson StreetEvents, *CMCSA – Q4 2006 Comcast Corporation Earnings Conference Call,* Conference *Call,* Final Tr. at 6 (Feb. 1, 2007) (statement of Comcast Corp. EVP, Co-CFO & Treasurer, John Alchin).

[87] Thomson StreetEvents, *TWX – Q4 2006 Time Warner Inc. Earnings Conference Call,* Final Tr. at 4 (Jan. 31, 2007) (statement of Time Warner Inc. Chairman & CEO, Dick Parsons).

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"[n]early 7,500 buildings lit with fiber based services,"[88] and, although Time Warner decided to spin-off Time Warner Telecom, Time Warner Cable remains free to obtain access to its former affiliate's network on a wholesale basis.

Cox Business Services – which operates in the Virginia Beach and Providence MSAs – has recently claimed that its revenue is currently growing at 20 percent per year and that "the RBOCs certainly know we're . . . taking business from them."[89] In its comments here, Cox states (at 1-2) that it has "180,000 business customers in service"; that it provides "business telephone service in each of its thirty-five markets across eighteen states"; that it "relies chiefly on its own network to compete with Verizon, and it has been very successful in bringing facilities-based competition to the Providence and Virginia MSAs." Cox further indicates (at 27, 32) that it serves a substantial number of business ***customers*** in the Virginia Beach and Providence MSAs; Cox also indicates (at 27) that it serves a substantial number of business ***lines*** in the Virginia Beach MSA, but fails, without explanation, to provide similar totals for the Providence MSA and does not dispute Verizon's estimate of Cox's business lines in Providence. ***See*** Cox at 27, 32. Cox also does not dispute the fact that, as the Commission found in Omaha, its cable network in the Providence and Virginia Beach MSAs is capable of serving the vast majority of business customers in those MSAs. To the contrary, Cox appears to concede

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[88] Time Warner Telecom, ***Investor Presentation*** at 9 (Mar. 2007), ***available at*** http://www.twtelecom.com/Documents/Announcements/News/2007/ TWTC_Mar07InvestorPresentation.pdf.

[89] Jim Duffy, ***Cable Companies Intensify Enterprise Service Ambitions,*** Network World (Oct. 24, 2006) (quoting Hyman Sukiennik, Vice President and General Manager, Cox Business Services).

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